

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

TECMARINE LINES, INC.,	:	CIVIL ACTION
Plaintiff	:	
	:	
v.	:	
	:	
CSX INTERMODAL, INC.,	:	
Defendant	:	NO. 01-CV-1658
Newcomer, S.J.		October , 2001

M E M O R A N D U M

Presently before the Court is Defendant CSX Intermodal, Inc.'s Motion to Dismiss for Lack of Subject Matter Jurisdiction, Plaintiff Tecmarine Line, Inc.'s second response to defendant's motion and both parties' replies thereto. For the reasons outlined below, defendant's Motion to Dismiss is granted.

BACKGROUND

Plaintiff, Tecmarine Lines, Inc., is in the business of leasing chassis to implement transportation of cargo through various modes of transportation. Plaintiff brings suit to recover the cost of 10 chassis which were allegedly lost while under the control of the defendant, CSX Intermodal, Inc.

On June 12, 2001, defendant moved this Court to dismiss plaintiff's complaint for lack of subject matter jurisdiction. Because plaintiff's original response was ambiguous, this Court ordered plaintiff to submit additional briefing "that sets forth in detail and with precision how subject matter jurisdiction is

conferred on the Court in this case." Tecmarine Lines, Inc. v. CSX Intermodal, Inc., No. 01-1658 (E.D.Pa. August 13, 2001).

Plaintiff filed an additional brief on August 17, 2001, along with an amended complaint. Plaintiff's amended complaint bases jurisdiction on "the Interstate Commerce Act, 49 U.S.C. § 10101, et seq." as well as various shipping statutes administered by the Federal Maritime Commission, cited as "46 U.S.C. App. § 1710 et seq.", "46 U.S.C. App. § 1701 et seq.", "46 CFR 500 et seq."

DISCUSSION

A plaintiff suing in federal court has an affirmative duty to allege in his pleading, "affirmatively and distinctly," the basis for federal court jurisdiction. Smith v. McCullough, et al., 270 U.S. 456, 459 (1925). A proper pleading must contain "a short and plain statement of the grounds upon which the court's jurisdiction depends. . . ." Fed.R.Civ.P. 8(a)(1) ("Rule 8"). Absent a clear showing of federal jurisdiction, "no judgment by a federal court can stand." N.L. Wymard v. McCloskey & Co., Inc., 342 F.2d 495 (3rd Cir. 1965). Therefore, a federal court's decision to entertain a complaint which has not been clearly shown to be within that court's jurisdiction is not, "simply wrong but indeed an unconstitutional invasion of the powers reserved to the states." Randazzo v. Eagle-Pitcher Industries, Inc., et al., 117 F.R.D. 557, 559 (E.D.Pa. 1987).

Plaintiff's complaint fails to affirmatively and distinctively allege the basis for federal jurisdiction in a "short and plain" statement. Therefore, it must be dismissed. Plaintiff's complaint alleges that jurisdiction arises under "28 U.S.C. § 1337" (presumably § 1337(a)) in conjunction with "the Interstate Commerce Act, 49 U.S.C. § 10101, et seq." Plaintiff's casual use of "et seq.," an abbreviation meaning "and those (pages or sections) that follow," leads this Court to no less than 3 parts, 25 chapters, 150 sections and 525 pages of the Interstate Commerce Act. Black's Law Dictionary 574 (7th ed. 1999). In much the same broad manner, plaintiff also alleges federal jurisdiction via three acts falling under the control of the Federal Maritime Commission. This Court has neither the responsibility nor time necessary to parse through this voluminous collection of statutes in order to make plaintiff's case. By using the broad "et seq." cite in conjunction with these extensive acts, plaintiff has failed to give a short and plain statement of jurisdiction, thereby failing to meet the provisions of Rule 8. Federal courts lack subject matter jurisdiction over complaints which fail to meet the minimal pleading requirements under the Rules of Civil Procedure. Digianvittorio v. Unknown, 1993 WL 451519 (E.D.Pa. 1993) (citing Neitzke v. Williams, 490 U.S. 319, 327 n.6 (1989)). Accordingly, this Court lacks proper jurisdiction over plaintiff's complaint

and must dismiss it.

In addition, the plaintiff's blanket citing of entire acts has not only violated Rule 8 but has also made it impossible for this Court to determine whether federal subject matter jurisdiction exists. Even if this Court endeavored to determine whether each of the more than 150 sections previously mentioned give rise to federal jurisdiction, the Court is without the facts necessary to make such a decision.

Finally, plaintiffs' use of case law adds to the confusion. Plaintiff cites Thurston Motor Lines, Inc. v. Rand, 460 U.S. 533 (1983) in an apparent attempt to rebut defendant's assertion that jurisdiction is lacking because the minimum \$10,000 requirement for each receipt or bill of lading is not met, as required under 28 U.S.C. § 1337(a). Said monetary requirement is only necessary if suit is brought under 49 U.S.C. §§ 11706, 14706. 28 U.S.C. § 1337(a). The Court is uncertain whether plaintiff cited Thurston to qualify use of 49 U.S.C. §§ 11706, 14706 thereby giving rise to federal jurisdiction, or, for some other reason. Regardless, the plaintiff should be aware that the Thurston Court reached its conclusion based on the fact that in Thurston, a common carrier filed suit against a shipper [\$661.41 in unpaid motor freight charges is sufficient to give rise to federal jurisdiction despite the \$10,000 bill of lading requirement under 28 U.S.C. § 1337(a)]. Thurston at 533. The

case at hand presents an alternate scenario where the shipper is suing the common carrier. This is significant as the Interstate Commerce Act regulates common carriers and not shippers. It is more than likely that the Thurston Court's relaxed stance with regard to the monetary requirement of 28 U.S.C. § 1337(a) was largely based on the fact that a common carrier sued a shipper and shippers do not fall under the provisions of § 1337(a). Kansas City Terminal Railway, Co. v. Jordon Manufacturing Co., 750 F.2d 551 (7th Cir. 1984). Thus, application of Thurston to the scenario at hand (shipper suing common carrier) in order to suggest the requirements of 28 U.S.C. § 1337(a) have been met is questionable.

CONCLUSION

This Court finds that Tecmarine's complaint fails to properly state the basis for federal jurisdiction and was therefore filed in violation of Fed.R.Civ.P. 8(a)(1). Although the complaint cites several acts as giving rise to federal jurisdiction, no specific sections of said acts were referenced. This court is unable to entertain a complaint without a clear and concise showing of federal jurisdiction. To date, no such showing has been made. Therefore, plaintiff's complaint is dismissed. However, plaintiff shall have leave of court until 5:00 P.M., October 24, 2001 to submit a new complaint indicating

affirmatively, concisely and distinctively the basis for federal court jurisdiction.

Clarence C. Newcomer, S.J.